

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the reasons that follow. Claims 1-4, 6, and 10-21 remain pending in this application.

Applicant wishes to thank the Examiner for the careful consideration given to the claims.

Rejection of claims 1-4, 6, and 10-21 based on Philippe and Mueller

Claims 1-4, 6, and 10-21 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over FR 2771966 (“Philippe”)¹ and DE 10031991 (“Mueller”). For at least the following reasons, this rejection is traversed.

Philippe and Mueller do not teach or suggest all the features of claims 1 and 11

Claim 1 recites, among other things, a circumferential surface of a part-cylinder, wherein the circumferential surface forms a first region, two circle segment surfaces forming lateral side surfaces of the part-cylinder, wherein each circle segment surface forms a second region, an externally surrounding rim, which is arranged substantially in two planes, projects perpendicularly outward from the circumferential surface along two edges of the circumferential surface that run along a longitudinal direction of the circumferential surface, and serves to bear against correspondingly designed bearing surfaces, at least a second rim projecting perpendicularly outward from the circumferential surface, the circle segment surfaces, or a combination thereof, and at least one opening in at least one segment of the first region, one or both of the second regions, or a combination thereof. The at least one segment is delimited by the externally surrounding rim and the second rim. Claim 11 recites similar and/or analogous features. No combination of Philippe and Mueller teaches or suggests this combination of features.

For example, neither Philippe nor Mueller teaches or suggests an externally surrounding rim, which projects perpendicularly outward from the circumferential surface along two edges of the circumferential surface that run along a longitudinal direction of the circumferential surface. Element 64 of Philippe (which the PTO considers to be the externally surrounding rim of claims 1 and 11) does not project perpendicularly outward from the circumferential surface along two edges of the surfaces 50 (which the PTO considers to be

¹ The Office Action refers to Philippe as “Pierre.”

the circumferential surface of claims 1 and 11). Indeed, the element 64 of Philippe only projects outward from one edge of the surfaces 50.

Mueller does not cure the deficiencies of Philippe. For example, Fig. 7 of Mueller (which is cited by the PTO in the rejection of claims 1 and 11) merely shows an air flap with elements 14 and 17, and side walls 19. The air flap of Fig. 7 does not show an externally surrounding rim projecting perpendicularly outward from the circumferential surface along two edges of the circumferential surface that run along a longitudinal direction of the circumferential surface. The PTO asserts that element 14 of Mueller is equated with the externally surrounding rim of claims 1 and 11. (Page 4 of the Office Action.) However, this element 14 of Mueller does not project perpendicularly outward from region 12 of Mueller (which the PTO equates with the circumferential surface of claims 1 and 11) along two edges of region that run along a longitudinal direction of region 12. Element 14 of Mueller merely runs along one edge of the region 12 along the longitudinal direction of region 12. Thus, element 14 of Mueller cannot be considered the externally surrounding rim of claim 1 or 11. Because Philippe and Mueller do not teach or suggest an externally surrounding rim projecting perpendicularly outward from the circumferential surface along two edges of the circumferential surface that run along a longitudinal direction of the circumferential surface, claims 1 and 11 are allowable.

Also, Philippe and Mueller do not teach or suggest a second rim projecting perpendicularly outward from the circumferential surface, the circle segment surfaces, or a combination thereof in which at least one segment (with at least one opening) is delimited by the externally surrounding rim and the second rim. The PTO asserts that the top and side edges of element 48 of Philippe are considered to be the second rim of claims 1 and 11. (Page 2 of the Office Action.) However, these top and side edges do not project perpendicularly outward from the surfaces 50 (which the PTO considers to be the circumferential surface of claims 1 and 11). (Fig. 4 of Philippe.) Indeed, the top and side edges of element 48 do not project outward from the surfaces 50. Thus, Philippe does not teach or suggest at least a second rim projecting perpendicularly outward from the circumferential surface, the circle segment surfaces, or a combination thereof.

Mueller does not cure the deficiencies of Philippe. For example, Fig. 7 of Mueller (which is cited by the PTO in the rejection of claims 1 and 11) merely shows an air flap with

elements 14 and 17, and side walls 19. The air flap of Fig. 7 does not show a second rim projecting perpendicularly outward from the circumferential surface, the circle segment surfaces, or a combination thereof in which at least one segment (with at least one opening) is delimited by the externally surrounding rim and the second rim. The PTO asserts that element 17 of Mueller is equated with the second rim of claims 1 and 11. (Page 4 of the Office Action.) However, this element 17 of Mueller does not delimit with element 14 (which the PTO equates with the externally surrounding rim of claims 1 and 11) at least one segment with at least one opening. Thus, element 17 of Mueller cannot be considered the second rim of claim 1 or 11. Because Philippe and Mueller do not teach or suggest a second rim projecting perpendicularly outward from the circumferential surface, the circle segment surfaces, or a combination thereof in which at least one segment (with at least one opening) is delimited by the externally surrounding rim and the second rim, claims 1 and 11 are allowable.

Philippe and Mueller do not teach or suggest all the features of claims 13 and 17

Claim 13 recites, among other things, a part-cylinder surface, which forms a first region, two circle segment surfaces, wherein each circle segment surface forms a second region, an externally surrounding rim, which is arranged substantially in two planes, projects perpendicularly outward from the circumferential surface along two edges of the circumferential surface that run along a longitudinal direction of the circumferential surface, and serves to bear against correspondingly designed bearing surfaces, at least a second rim, which serves to bear against a corresponding designed bearing surface, a third region with a planar surface, wherein the second rim extends above the planar surface of the third region and runs substantially around the third region, and a planar intermediate region arranged at an angle not equal to 180° from the third region. The third region indirectly adjoins a lateral surface in a region of the externally surrounding rim via the intermediate region. Claim 17 recites similar and/or analogous features. Philippe and Mueller do not teach or suggest this combination of features.

For example and as previously mentioned, neither Philippe nor Mueller teaches or suggests an externally surrounding rim, which projects perpendicularly outward from the circumferential surface along two edges of the circumferential surface that run along a

longitudinal direction of the circumferential surface. Because Philippe and Mueller do not teach or suggest these features, claims 13 and 17 are allowable.

Also, neither Philippe nor Mueller teaches or suggests a third region in which the second rim extends above the planar surface of the third region and runs substantially around the third region. The PTO correctly states that Philippe does not teach a third region. (Page 4 of the Office Action.) Mueller does not cure the deficiencies of Philippe because element 17 (which the PTO equates with the second rim of claims 13 and 17) does not runs substantially around the area where element 17 “meets the space between 12 and 12” of Mueller (which the PTO equates with the third region of claims 13 and 17). Because Philippe and Mueller do not teach or suggest the third region in which the second rim extends above the planar surface of the third region and runs substantially around the third region, claims 13 and 17 are allowable.

Philippe and Mueller do not teach or suggest all the features of claim 21

Claim 21 recites, among other things, a part-cylinder surface, which forms a first region; two circle segment surfaces, wherein each circle segment surface forms a second region; an externally surrounding rim, which is arranged substantially in two planes, projects perpendicularly outward from the circumferential surface along two edges of the circumferential surface that run along a longitudinal direction of the circumferential surface, and serves to bear against correspondingly designed bearing surfaces; at least a second rim, wherein the second rim serves to bear against a corresponding designed bearing surface or projects perpendicularly outward from a circumferential surface of the part-cylinder surface, the circle segment surfaces, or a combination thereof; and one of: (a) at least one opening in at least one segment of the first region, one or both of the second regions, or a combination thereof such that the at least one segment is delimited by the externally surrounding rim and the second rim; or (b) a third region indirectly adjoining a lateral surface in a region of the externally surrounding rim via a planar intermediate region such that the intermediate region is arranged at an angle not equal to 180° from the third region, which has a planar surface such that the second rim extends above the planar surface of the third region and runs substantially around the third region. No combination of Philippe and Mueller teaches or suggests this combination of features.

As previously mentioned, Philippe and Mueller do not teach or suggest an externally surrounding rim projecting perpendicularly outward from the circumferential surface along two edges of the circumferential surface that run along a longitudinal direction of the circumferential surface. Also, Philippe and Mueller do not teach or suggest a second rim projecting perpendicularly outward from the circumferential surface, the circle segment surfaces, or a combination thereof in which at least one segment (with at least one opening) is delimited by the externally surrounding rim and the second rim or a third region in which the second rim extends above the planar surface of the third region and runs substantially around the third region. Because Philippe and Mueller do not teach or suggest these features, claim 21 is allowable.

Claims 1, 11, 13, 17, and 21 are allowable because the combination of Philippe and Mueller is improper

Philippe discloses a heating and/or cooling device for a motor vehicle which includes a housing 10 defining an internal chamber 16 suitable to be fed by a stream of air and communicates with a first outlet 32, a second outlet 34 and a third outlet 38. (Fig. 1 of Philippe.) A single drum-type flap 20 is mounted for rotation about an axis XX, and has two side flanges 48 joined by a circular cylindrical wall 50. (Fig. 4 of Philippe.) The cylindrical wall 50 is provided with openings and for channeling air to the first outlet 32, the second outlet 34, and the third outlet 38. (Abstract of Philippe.) Figs. 1-2 show how the flap 20 channels air uses the openings in the cylindrical wall 50 to channel air into the various passages.

The PTO asserts that it would have been obvious to incorporate the air guidance element 18 of Mueller (with its elements 14 and 17 and “the portion between the elements 12 and 12”) into the flap of Philippe “in order to stop the rotation of the valve and in order to make possible also a lateral air circulation and seal.” (Page 5 of the Office Action.) A rejection based on this modification is improper. MPEP 2143.01 states that “[i]f proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).” In this case, the addition of the air guidance element 18 into cylindrical wall 50 of Philippe would cover up the openings along the cylindrical wall 50 of Philippe when the “portion between elements

12 and 12" of Mueller is placed in between the flanges 48 and 48 of Philippe. With the openings of Philippe covered up, the flap 20 of Philippe is no longer suitable for channeling air to the first outlet 32, the second outlet 34, and the third outlet 38. If the flap 20 of Philippe cannot channel air to these passages as a result of the modification, the proposed modification makes the flap of Philippe unsuitable for its intended purpose. As a result, the rejection is improper, and claims 1, 11, 13, 17, and 21 are allowable.

Furthermore, the rejection based on the incorporation of the air guidance element 18 of Mueller in the flap 20 of Philippe is improper because it changes the principle of operation of the flap of Philippe. MPEP 2143.01 provides "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)." In this case, the openings in the cylindrical wall 50 of Philippe channel air into the first outlet 32, the second outlet 34, and the third outlet 38. Mueller uses the air guidance element 18, which has no openings. The cylindrical wall 50 of Philippe and the air guidance element 18 of Mueller work on such different principles of air flow control that the use of one necessarily changes the principle of operation of the other. Because the proposed modification of the air guidance element 18 of Mueller changes the principle of operation of the flap 20 of Philippe, the proposed modification is improper, and claims 1, 11, 13, 17, and 21 are allowable.

Allowability of dependent claims

Claims 2-4, 6, 10, 12, 14-16 and 18-20 depend from and contain all the features of claim 1, 11, 13, or 17 and are allowable for the same reasons provided above without regard to the further patentable features contained therein.

For at least these reasons, favorable reconsideration of the rejection is respectfully requested.

Conclusion

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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